

COMMITTEE FOR IDAHO'S HIGH DESERT

IBLA 93-619

Decided December 4, 1996

Appeal from a decision by the Snake River Area Manager, Burley (Idaho) District, Bureau of Land Management, finding no significant impact, based on Environmental Assessment No. ID-020-93-024, and approving chemical treatment of sagebrush and snakeweed in two grazing allotments.

Affirmed.

1. Environmental Quality: Environmental Statements

The general standard upon NEPA review of a BLM decision based on a FONSI for the proposed action is whether the record establishes that BLM took a "hard look" at the environmental consequences of the action; identified the relevant areas of environmental concern; made a reasonable finding that the impacts studied are insignificant; and with respect to any potentially significant impacts, whether the record supports a finding that mitigating measures have reduced the potential impact to insignificance.

2. Environmental Quality: Environmental Statements

A decision will be affirmed on appeal if it is based on a consideration of all relevant factors and is supported by the record, including an EA which establishes that a careful review of environmental problems has been made, all relevant areas of environmental concern have been identified, and the final determination is reasonable in light of environmental analysis. A party challenging a decision must show that the determination was premised on a clear error of law, a demonstrable error of fact, or that the analysis failed to consider a substantial environmental question of material significance to the action for which the analysis was prepared. Mere differences of opinion provide no basis for reversal of BLM's decision if it is reasonable and supported by the record on appeal.

3. Administrative Procedure: Administrative Review--Appeals: Jurisdiction--Board of Land Appeals

The Board of Land Appeals does not have jurisdiction to adjudicate challenges to the adequacy or completeness of a resource management plan. A resource management plan establishes management policy, and its approval is subject only to protest to the Director, BLM, whose decision is final for the Department. However, decisions which implement the policy stated in a resource management plan are appealable to the Board.

APPEARANCES: Randy Morris, Chairperson, Committee for Idaho's High Desert.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

The Committee for Idaho's High Desert (CIHD) has appealed from a decision and finding of no significant impact (FONSI) based upon the Tugaw Sagebrush and Snakeweed Control Environmental Assessment (EA) ID-020-93-024. The decision and finding were issued by the Snake River Area Manager, Burley (Idaho) District, Bureau of Land Management (BLM), on July 15, 1993. The decision adopts the recommendation, rationale, and mitigation measures BLM developed for use of the herbicide 2,4-D to treat Wyoming big sagebrush on 200 acres of a 320-acre tract in secs. 24 and 25, T. 12 S., R. 20 E., Boise Meridian, which is part of the Buckhorn-Churchill Allotment, and the use of the herbicide Picloram to treat snakeweed in a 200-acre tract in secs. 8 and 17, T. 12 S., R. 19 E., Boise Meridian, which is a part of the Artesian-Kidd Allotment.

BLM's statement of the purpose and need for EA-ID-020-93-024 reads as follows: "The purpose of the proposed action is to better control sagebrush and snakeweed encroachment in crested wheatgrass seedings. The proposed action is needed to protect the initial investments, restore the forage production by removing competition, and improve the condition of the seedings" (EA at 1, 2).

The EA describes the general setting of the affected grazing allotments as:

The Buckhorn-[Churchill] Allotment is located 10 miles northwest of Oakley and the Artesian-Kidd Allotment is located 15 miles northwest of Oakley. These allotments are bordered by private land to the north and Forest Service land to the south. The Buckhorn-Churchill Allotment consists of 7,876 acres of federal land of which approximately 22% or 1,730 acres have been seeded to crested wheatgrass and the remainder is native range. The Artesian-Kidd Allotment consists of 4,869 acres [of] federal land consisting of approximately 12% or 560 acres of crested wheatgrass seedings and the remaining acreage is native range.

(EA, III. AFFECTED ENVIRONMENT: A. General Setting). ^{1/}

The 200-acre tract selected for treatment in the Buckhorn-Churchill Allotment was seeded with crested wheatgrass to provide forage for cattle in 1966. At the time, 20 percent of the allotment was covered with sagebrush and the allotment provided forage for 93 animal unit months (AUM's). ^{2/} In 1993 sagebrush covered 45 percent of the tract, and BLM monitoring data indicate that increased sagebrush cover has reduced the parcel's carrying capacity to 68 AUM's (EA, I. A. Purpose and Need for the Proposed Action). When the Artesian-Kidd Allotment was seeded with crested wheatgrass in 1955, no snakeweed was growing on that parcel. In 1993, snakeweed covered 45 percent of the acreage, reducing the number of AUM's the land could support from approximately 103 to 73 AUM's (EA, I. A. Purpose and Need for the Proposed Action).

Several alternative methods of controlling the snakeweed and sagebrush were considered. Alternative 1, which contemplated applying Spike (a chemical herbicide), was rejected because Spike was effective in controlling sagebrush, but was not as effective as Picloram in controlling snakeweed and cost twice as much to apply as 2,4-D. Alternative 2, prescribed burning, was rejected because it was not as effective, manageable, or accurate in controlling snakeweed as chemical treatment. Alternative 3, mechanical brush control, was rejected because it would disturb topsoil and provide an ideal seedbed for snakeweed and other noxious weeds. The fourth alternative, the no action alternative, was rejected because the initial investment made in seeding the land with crested wheatgrass would be lost if sagebrush and snakeweed are not controlled (EA, II. B. Alternatives).

BLM assessed the environmental impact of the proposed herbicide applications on soils, vegetation, water, recreation, landscape visual effects, and wildlife. The EA document concludes that reduction of the snakeweed would be beneficial to the deer and antelope populations because they forage on crested wheatgrass in the spring and during mild winters and do not eat snakeweed. To mitigate possible negative effects upon wildlife and songbirds as a result of a loss of cover, a 120-acre tract in the Buckhorn-Churchill Allotment would not be treated, and a riparian tract would be fenced to bar livestock access. Nested frequency monitoring transects would be established in the area to monitor the effect of the proposed treatment on the vegetation.

The BLM scoping document states that the EA for the use of herbicides to control sagebrush and snakeweed in the two allotments is tiered to the Cassia Resource Management Plan (RMP) and the Environmental Impact Statement (EIS) entitled "Vegetation Treatment on BLM Lands in Thirteen Western

^{1/} The citations to the EA identify the outline organization of that document. The EA in the record is not paginated.

^{2/} An AUM is " * * * the amount of forage necessary for the sustenance of one cow or its equivalent for a period of 1 month." See 43 CFR 4100.0-5.

States." The Record of Decision for the EIS was signed by the Director of BLM on August 7, 1991 (Decision Record and Finding, Appendices C and D).

On January 28, 1993, the Burley District Manager sent a letter and the BLM scoping document to 65 individuals, organizations (including CIHD), and State and Federal officials, advising them of the proposed herbicide spray action, noting that an EA was being prepared, and soliciting comments, which were to be submitted by March 1, 1993. ^{3/}

CIHD submitted comments on the scoping document to BLM on February 27, 1993, and on April 5, 1993, BLM sent CIHD draft copies of the EA and an unsigned FONSI for comment and review. On April 28, 1993, CIHD submitted comments on the proposed draft EA and FONSI to BLM. BLM has addressed the CIHD comments, and the final EA and FONSI reflect consideration of the concerns expressed by CIHD and other public and governmental commentators. The final EA includes provisions for a monitoring program to assess the effect of the proposed herbicide treatment on vegetation. On July 15, 1993, a copy of the final EA and the FONSI as approved by the Snake River Area Manager, BLM, were sent to CIHD (Decision Record and Finding, Appendices B and C).

CIHD appealed BLM's July 15, 1993, decision. By order dated September 28, 1993, BLM's decision was stayed pending appeal.

CIHD characterizes itself as "a non-profit, 'grass roots,' all-volunteer organization committed to participating in the sound management of Idaho's high desert country." CIHD states that its members use Federal public lands for "recreational, educational, scientific, aesthetic, and religious purposes," and that the organization has been actively involved in management and stewardship decisions which affect public lands since 1979 (Request for Extension of Time, 1-2).

In its statement of reasons (SOR), CIHD cites three reasons for reversing the BLM decision on appeal:

(1) EA (ID-020-93-024) was not prepared in accordance with the regulations for Implementing the Procedural Provisions of the National Environmental Policy Act (NEPA) (40 CFR Parts 1500-1508).

^{3/} A number of specialists were consulted during preparation of the EA, including the following members of BLM's Snake River Resource Area staff: area manager, district archaeologist, wildlife biologist, ecologist, outdoor recreation planner, and supervisory range conservationist. In addition to the grazing permittee, CIHD, and a representative of the BLM advisory board for recreation, the following governmental entities were represented: Shoshone-Bannock Tribes, the U.S. Fish and Wildlife Service, and the Idaho Department of Fish and Game (EA, V. CONSULTATION AND COORDINATION).

(2) The EA failed to state the factual present condition of the native Snakeweed in the Artesian-Kidd Allotment.

(3) The goals stated in the land use plan to which the EA is tiered are arbitrary and unreasonable and preclude the development of reasonable alternatives.

CIHD alleges that EA ID-020-93-024 was not prepared in accord with regulations, found at 40 CFR Parts 1500-1508, that apply to and bind all Federal agencies in implementing the procedural provisions of the National Environmental Policy Act of 1969 (NEPA), as amended, P.L. 91-190, 42 U.S.C. § 4321-4370 (1994). Specifically, CIHD asserts that BLM's statement in the EA identifying the purpose and need for the proposed action "is totally inadequate and is in violation of 40 CFR 1502.13 * * *" (SOR at 2-3). 40 CFR 1502.13 specifies how the purpose and need of an EIS shall be expressed: "The [EIS] shall briefly specify the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action."

We note that CIHD's analysis applies regulations found at 40 CFR Part 1502 for the development of an EIS to the development of an EA. The tiering relationship between an EIS and a site-specific EA is specified at 40 CFR 1502.20:

Agencies are encouraged to tier their environmental impact statements to eliminate repetitive discussions of the same issues and to focus on the actual issues ripe for decision at each level of environmental review (§1508.28). Whenever a broad environmental impact statement has been prepared (such as a program or policy statement) and a subsequent statement or environmental assessment is then prepared on an action included within the entire program or policy (such as a site specific action) the subsequent statement or environmental assessment need only summarize the issues discussed in the broader statement by reference and shall concentrate on the issues specific to the subsequent action. The subsequent document shall state where the earlier document is available.

Thus, tiering is used when developing a site-specific EA to isolate specific relevant issues for analysis and review and to incorporate by reference policy determinations upon which those specific actions will be based.

[1] The general standard upon NEPA review of a BLM decision based on a FONSI for the proposed action is whether the record establishes that BLM took a "hard look" at the environmental consequences of the action; identified the relevant areas of environmental concern; made a reasonable finding that the impacts studied are insignificant; and with respect to any potentially significant impacts, whether the record supports a finding that mitigating measures have reduced the potential impact to insignificance. Oregon Natural Resources Council, 131 IBLA 180, 186 (1994).

CIHD asserts that BLM did not take a "hard look" in its NEPA analysis and offers its observation that broom snakeweed is a native plant while crested wheatgrass is an exotic introduced to provide forage for cattle. CIHD alleges that BLM fails to demonstrate how controlling broom snakeweed will restore the forage production of the crested wheatgrass seedings. ^{4/} CIHD argues that BLM ignores the underlying causes of snakeweed vitality: drought and excessive cattle grazing on the crested wheatgrass (SOR at 3, 4).

CIHD argues that as a result of BLM's failure to agree with CIHD regarding the cause of the increase in snakeweed, BLM failed to explore the full range of appropriate and reasonable alternatives and thus was unable to make a reasoned choice from among reasonable options (SOR at 6). Alternatives that CIHD asserts should have been examined by BLM are the reduction in the numbers of livestock permitted to graze, changes in season of use, and extended rest from grazing (SOR at 6).

The record shows that BLM considered and rejected the alternatives raised by CIHD, but had not ruled out reconsideration of those options at a later date:

The area included in this proposal is under responsible management. Approximately 100 head of cattle run on the [Buckhorn-Churchill] proposed pasture for 15 days in October when crested wheatgrass is dormant. The proposed pasture is grazed for two years, then rested two years. This alternates every second year. The area proposed for snakeweed spray on the Artesian-Kidd Allotment is grazed in the spring every year. We will be considering management changes on this allotment. The Artesian-Kidd Allotment was rested in the spring this year and will not be used again until grasses and forbs rejuvenate after spraying.

(EA, Appendix B, Response to Comments Received During the Comment Period).

BLM also notes in the EA that further determinations regarding grazing in the allotments would be made after examining the success of the spray program in revitalizing crested wheatgrass:

^{4/} In a May 3, 1993, response to the proposed EA and FONSI, CIHD raised essentially the same question with regard to reduced vitality of crested wheatgrass in areas with sagebrush encroachments. In its response BLM stated that:

"In a study done on the Tews Berger Allotment in the Burley District it was found that crested wheatgrass seedings with 11.4% sagebrush canopy decreased significantly in pounds [of] air-dry crested wheatgrass/acre compared to those with 0 percent sagebrush canopy. For example, in 1970, areas with no treatments and 11.4% sagebrush canopy had 652 pounds [of] air-dry crested wheatgrass/acre while areas that were treated and had 0% sagebrush canopy had 1250 pounds [of] air-dry crested wheatgrass/acre."

(Decision Record and Finding, Appendix B at 1).

Treated areas would be rested from livestock grazing for at least one growing season after completion of the treatment. Afterwards a deferred or rest rotation grazing system would be employed. If the forage species, primarily crested wheatgrass, have not regained the desired health and vigor in the one growing season of rest, additional rest would be implemented. The need for additional rest will be determined by the Bureau of Land Management (BLM).

(EA, II. PROPOSED ACTIONS AND ALTERNATIVES: A. Proposed Action).

CIHD identifies three additional areas in which it disagrees with BLM's EA and FONSI: the finding of no negative cumulative impacts on wildlife and threatened and endangered species (SOR at 9); 5/ identification of mitigation measures to compensate for the reduction in shrub cover (SOR at 12-15) 6/; and the design and implementation of a monitoring plan (SOR at 15, 16). 7/

[2] A FONSI decision will be affirmed on appeal if it is based on a consideration of all relevant factors and is supported by the record, including an EA which establishes that a careful review of environmental problems has been made, all relevant areas of environmental concern have been identified, and the final determination is reasonable in light of environmental analysis. A party challenging a FONSI finding must show that the determination was premised on a clear error of law, a demonstrable error of fact, or that the analysis failed to consider a substantial environmental question of material significance to the action for which the analysis was prepared.

CIHD has failed to identify deficiencies in BLM's EA and FONSI that are premised on an error of law, a demonstrable error of fact, or which show a failure to consider and analyze an environmental question of consequence to the action under review, and has failed to demonstrate that BLM

5/ CIHD's argument regarding the impact of spraying on threatened and endangered species of wildlife is hypothetical. The area under consideration was not identified as habitat for threatened or endangered species. CIHD alleges that "candidate species and species of special concern" have been harmed by BLM actions "similar to the proposed action" (SOR at 9). Compare BLM's discussion of the effects of spraying on wildlife in the EA at III. AFFECTED ENVIRONMENT: B. Affected resources, Non-critical Elements. Wildlife.

6/ BLM's mitigation measure providing sagebrush cover for wildlife and birds by creating a leave area was cited with approval in an Apr. 14, 1993, U.S. Fish and Wildlife Service memorandum signed by the Field Supervisor, Ecological Services.

7/ The EA states that nested frequency transects would be established prior to treatment and the effect of the proposed treatment on vegetation would be monitored (EA, II. PROPOSED ACTIONS AND ALTERNATIVES: A. Proposed Action).

failed to take a "hard look" at the environmental consequences of its proposed action to spray the two grazing allotments.

Mere differences of opinion provide no basis for reversal of BLM's decision if the decision is reasonable and supported by the record on appeal. Southern Utah Wilderness Alliance, 127 IBLA 331, 100 I.D. 370 (1993); Sierra Club, Toiyabe Chapter, 131 IBLA 342, 345 (1994). CIHD proposes that BLM monitor its grazing plan for several years to see if it works, evaluate the effects of the recent drought on the land, and then decide whether to apply herbicide to destroy the snakeweed and sagebrush (SOR at 15). In asserting these differences with the EA, CIHD expresses opinions but supplies no evidence to support its views or to show how its proposals are more rational than those proposed by BLM.

CIHD's second reason on appeal for reversing BLM's decision is that BLM failed to state the condition of the snakeweed on the Artesian-Kidd Allotment (SOR at 16). CIHD contends that in a field examination of the allotment, its representative found evidence that boring insects were damaging snakeweed plants. CIHD uses this observation to argue that BLM should delay spraying snakeweed on the allotment to allow the demise of the snakeweed by the boring insects (SOR at 16). CIHD thus argues that taking no action and standing by while insects feed on the snakeweed would not have a significant impact on the environment and would be preferable to the use of the herbicide. CIHD's expression of opinion fails to demonstrate an error of law or fact that would require reversal of BLM's decision.

When making its determination that a herbicide treatment of grazing allotments would not have a significant impact on the environment, BLM was required to make reasoned subjective decisions. Those decisions are entitled to considerable deference even though reasonable men might differ in making such assessments. When BLM's subjective assessments are challenged on appeal, there must be a showing of clear error of law or demonstrable error of fact. Committee for Idaho's High Desert, 130 IBLA 327, 331-32 (1994).

CIHD's third reason for appealing BLM's FONSI in EA No. ID-020-93-024 relates to its disagreement with the goals promulgated in the Cassia RMP (SOR at 16, 17). CIHD argues that the goals stated in the EIS of the Cassia RMP are "arbitrary and unreasonable" because in the interest of enhancing forage (exotic crested wheatgrass) for one species of animal (cattle), BLM is suppressing natural succession and biological diversity (SOR at 16). CIHD alleges that "BLM did not analyze natural succession and biological diversity to any significant degree in the Environmental Impact Statement of the Cassia Resource Management Plan" (SOR at 17) and that the RMP's method of predicting the forage which can be produced and sustained from crested wheatgrass appears to have been "pulled * * * out of thin air" and should be revised (SOR at 17). CIHD concludes that the EA's assumptions regarding forage goals are unreasonable because they are tiered

to the unreasonable forage goals in the Cassia RMP (SOR at 17). Thus, CIHD argues that it is impossible for an EA based on an irrational forage plan to rationally assess forage goals (SOR at 2, 17).

CIHD alleges that the environmental goals articulated in the Cassia RMP are inadequate, arbitrary, and capricious because they fail to "analyze to any significant degree" the concepts of "natural succession" and "biological diversity." However, CIHD does not define its proposed evaluation criteria or submit evidence to support its conclusion.

[3] CIHD challenges the policies found in the RMP that underlie the assumptions in the EA and only secondarily challenges the EA itself. This Board does not have jurisdiction to adjudicate challenges to the adequacy or completeness of an RMP. An RMP is "designed to guide and control future management actions * * *" and not to implement decisions on specific parcels of public land. 43 CFR 1601.02; 43 CFR 1601.0-5(k); The Wilderness Society, 109 IBLA 175, 178 (1989) and cases cited therein. An RMP establishes management policy, and is subject only to protest to the Director, BLM, whose decision is final for the Department. 43 CFR 1610.5-2. We make no ruling on the CIHD challenges to the policy set out in the Cassia RMP, the perceived deficiencies in that plan, or CIHD's proposed amendments to that plan and defer any consideration of those matters to the Director, BLM. The Wilderness Society, *supra*; *see also* Harold E. Carrasco, 90 IBLA 39 (1985).

To the extent not expressly or impliedly addressed in this decision, all other errors of fact or law alleged by appellants have been considered and are rejected. *See* National Labor Relations Board v. Sharples Chemicals, Inc., 209 F.2d 645, 652 (6th Cir. 1954); Glacier-Two Medicine Alliance, 88 IBLA 133, 156 (1985).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

R. W. Mullen
Administrative Judge

I concur:

C. Randall Grant, Jr.
Administrative Judge

